

U.S. Fish and Wildlife Service Pacific Southwest Region

Renewable Energy Scoping Meeting

March 12, 2009

Sacramento, CA

March 17, 2009

Palm Springs, CA

Mission and Regulatory Mandate of the U.S. Fish and Wildlife Service

- Mission: Working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.
- Endangered Species Act: provides a means for conserving the ecosystems upon which endangered and threatened species depend and a program for the conservation of such species.



Key ESA Regulations

Sections 7 and 10

- Section 7: Actions funded, authorized, or carried out by a Federal agency
- Section 10: Nonfederal actions
- Differences: Time, money, project scope, assurances



The "Take" Concept

- Take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.
- Must be incidental
- Harm: Habitat modification resulting in death or injury by impairing breeding, feeding, sheltering behavior
- Harass: Actions creating a likelihood of injury by disrupting breeding, feeding, sheltering behaviors



Section 7 Trigger

- May Affect: When a proposed action poses any effect on listed species or critical habitat.
- If Not Likely to Adversely Affect: Concurrence Letter
- If Adverse Affect: Biological Opinion



Section 10 Trigger

- Non-Federal Actions
- Incidental Take occurs



FWS Permitting Process

Section 7 Consultation

- Begins with early coordination when requested by agency
- Project cannot jeopardize a species or adversely modify critical habitat
- Action agency must submit a Biological Assessment:
 - Description of the action
 - Description of the action area
 - Description of any listed species or critical habitat
 - Description of how the action may affect any listed species or critical habitat and an analysis of any cumulative effects
 - Any other relevant available information/reports on the action, the affected listed species, or critical habitat
- Product: a Biological Opinion with Incidental Take Statement



FWS Permitting Process

Section 10 Permitting

- Applicant must develop a Habitat Conservation Plan
 - Minimize and Mitigate to maximum extent practicable
 - Cannot Jeopardize or Adversely Modify
 - Take must be incidental
 - Internal Section 7 consultation
- Applicant must assure funding for life of Plan
- NEPA must be done
- Long term monitoring and adaptive Management
- No surprises



FWS Permitting Timeline

Section 7

- Regulatory Timeframe: 135 days
- Reality is sometimes longer

Section 10

- Low Effect HCPs (NEPA CAT-EX): 3-5 years
- Standard HCPs (NEPA EA, EIS): 6-9 years



Major Factors that Affect Permitting Timeline

- Existing workload
- Early planning/project scheduling
- Poor Biological Assessment
 - Insufficient information about PD
 - Biological surveys should be coordinated with FWS before they occur
 - Insufficient analysis of effects
- Changes in Project Description delays time frames



Facilitating the Permit Process

- Pre-filing meetings
- Developing guidelines
- Hiring a regional energy coordinator
- Supplementing staff
- Developing Best Management Practices (BMPs)
- Exploring alternative procedural methods for consultations



Suggestions for Better Coordination

- Know your agency counterparts
- Work at lower levels
- Initiate consultation no earlier than the CEC's Preliminary Staff Assessment and when draft PEIS goes out for public comment

